Field J. 16-6 Argued Oct. 28. 1872

Postponed to Nov. 16. 1872

Postponed until 1st consultation day of next term

TRANSCRIPT OF RECORD.

Remand Stipulation

SUPREME COURT OF THE UNITED STATES.

No. ~~382.~~ ~~478~~ 24

CHARLES R. LYNDE, PLAINTIFF IN ERROR,

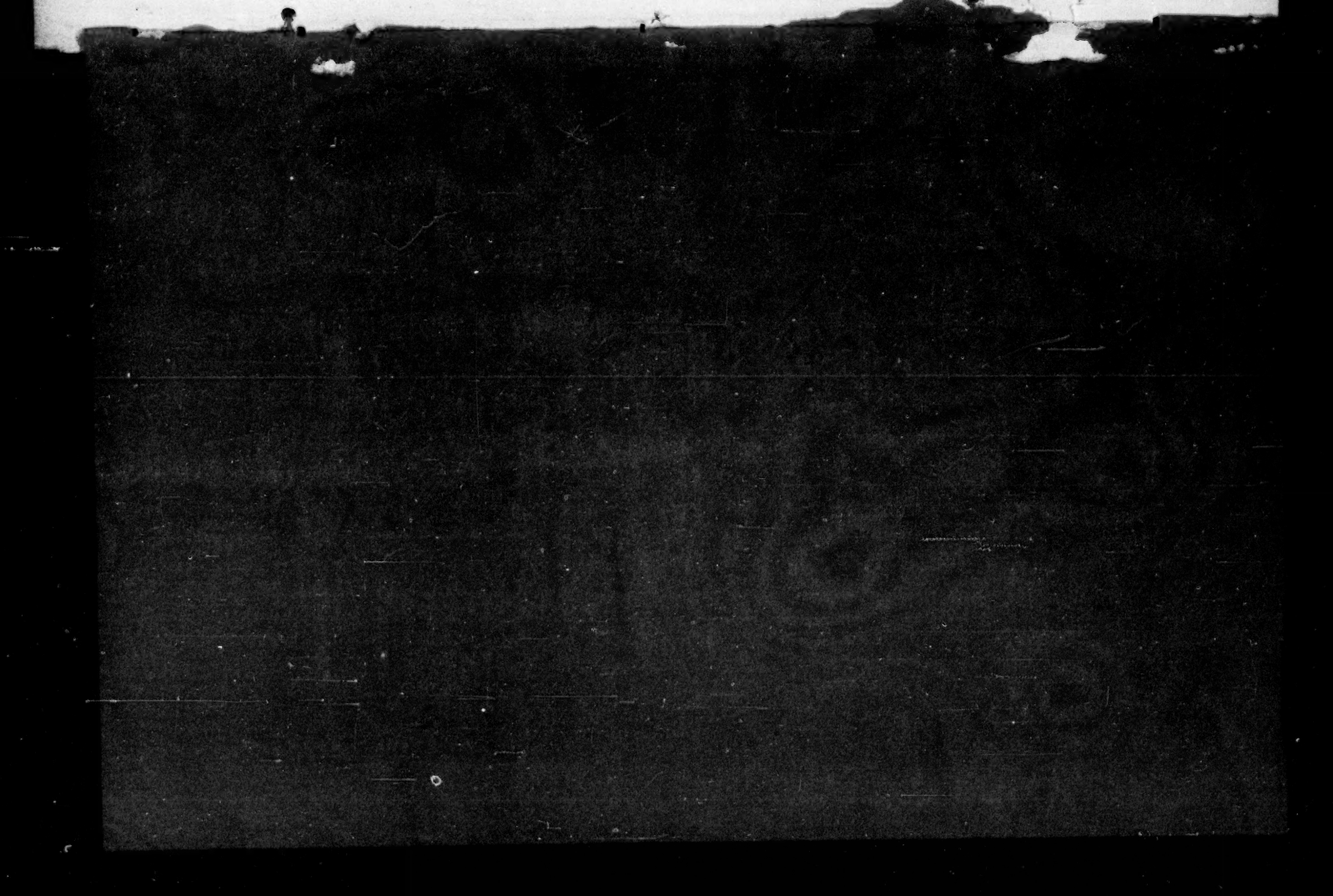
vs.

THE COUNTY OF WINNEBAGO, STATE OF IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED DECEMBER 10, 1870.

Dec. 3, 1872



SUPREME COURT OF THE UNITED STATES.

No. 382.

CHARLES R. LYNDE, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF WINNEBAGO, STATE OF IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 Pleas in the circuit court of the United States for the district of Iowa, held at the United States court-room, in the city of Des Moines, in the district aforesaid, before Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, and sole judge of said circuit court, on Tuesday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third year.

GEORGE B. CORKHILL, *Clerk.*

2 Now, on this day, to-wit, October 2d, A. D. 1865, comes the plaintiff, Charles R. Lynde, by Bissell and Shiras, his attorneys, and files in the office of the clerk of said court his præcipie for a writ of summons against The County of Winnebago, defendant, which said præcipie is in words and figures following, to wit.

In circuit court, State of Iowa, November term, 1865.

CHARLES R. LYNDE, CITIZEN OF THE STATE OF New York, pl't'ff.
vs.
WINNEBAGO COUNTY, CITIZEN OF THE STATE OF Iowa, a corporation organized under the laws of State of Iowa, and doing business in said State, def't.

Cause of action, assumpsit on twenty-six bonds & 130 coupons. Am't, twenty-two thousand dollars. Term, November term, 1865.

To WM G. WOODWARD, clerk.

Please issue summons in above cause and oblige.

Yours, &c.,

BISSELL & SHIRAS,
Pl'tff's Att'ys.

(Endorsed:) Filed Oct. 2d, 1865. W. G. Woodward, clerk C. C. U. S.

3 And afterwards, to wit, on the 6th day of November, A. D. 1865, a writ of summons issued out of the said clerk's office against The County of Winnebago, Iowa, which said writ of summons, together with the marshal's return thereon, is in words and figures following, to wit.

Summons.

UNITED STATES OF AMERICA,
District of Iowa:

To the marshal of the district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon The County of Winnebago, in the State of Iowa, to appear before the circuit court of the United States in and for the district of Iowa, at a term to be begun and holden at Des Moines, on the second Tuesday, it being the tenth day of May next, to answer unto Charles R. Lynde a citizen of the State of New York, in an action for debt in which the plaintiff claims the sum of twenty-two thousand
4 dollars & interest on bonds and coupons. Hereof fail not.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme

Court of the United States, at Des Moines, this 6th day of November, A D. 1865, and of the independence of the United States the 90th.

[SEAL.] W. G. WOODWARD,
Clerk.

[50-cent rev. stamp, cancelled.]

Marshal's appointment of special deputy to serve the above summons, endorsed on the back of said summons.

I hereby depute and authorize James Keeler, special deputy, to serve and make due and legal return of the within summons.

Dated Des Moines, Iowa, April 2d, 1866.

PETER MELENDY,
U. S. Marshal for Iowa.

Marshal's return.

Served this 12th day of April, 1866, by reading and leaving copy with E. D. Hinman, clerk; David Secor, treasurer; & Robert Clark, chairman of board of supervisors.

$22 50. J. KEELER,
Special Deputy U. S. Marshal.

(Endorsed:) Returned & filed, May 4, '66. Woodward, clerk.

5 CHARLES R. LYNDE,
vs.
THE COUNTY OF WINNEBAGO, IOWA.

Be it remembered that, on the second day of October, in the year of our Lord one thousand eight hundred and sixty-five, came Charles R. Lynde, by Bissell & Shiras, his attorneys, and filed in the clerk's office of the circuit court of the United States for the district of Iowa, at Des Moines, in said district, his petition in said entitled cause, which said petition is in the words and figures following, to wit:

6 *Petition at law.*

In United States circuit court for Iowa, November term, 1865.

STATE OF IOWA, UNITED STATES OF AMERICA:

CHARLES R. LYNDE, CITIZEN OF THE STATE of New York,
vs.
WINNEBAGO COUNTY, CITIZEN OF STATE OF Iowa.

Your petitioner, Charles R. Lynde, who is a citizen of the State of New York, claims of the defendant, The County of Winnebago, a body corporate, organized under the laws of the State of Iowa, and doing business in said State of Iowa, the sum of twenty-two thousand dollars and interest thereon, as money justly due pl'ff from defendant.

1st. And for cause of such claim plaintiff states that, heretofore, to wit, on the 9th day of March, 1860, the def'd't, for value received, made and executed seventy-six certain coupon bonds, numbered 2, 3, 4, 5, 6, 7,

8, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, & 32, each payable to Martin Bumgardner or bearer, and each payable on the first day of April, A. D. 1868, with interest at the rate of ten per
7 cent. per annum, the principal and interest being payable at the American Exchange Bank, in the city of New York; it being further provided that the failure on the part of defendant to pay the interest on any of said bonds promptly, according to the term thereof, should render the principal due and payable immediately; all of which will more fully appear from a copy of said bonds, hereto attached and made part of this petition.

2nd. Your petitioner further states that, before the maturity of said bonds and coupons, he became the owner and bearer thereof for a valuable consideration, and that he is now the holder and owner of the same.

3d. Petitioner further avers that the said bonds are precisely similar in form and alike in date, time of maturity, and amount, differing only in the number, the same being numbered as above set forth.

4th. Your petitioner further avers that, at the time of the execution of the said bonds as aforesaid, the said defendant, for the purpose of securing the payment of the annual interest on each of the said bonds as the same should become payable, executed eight interest
8 coupons on each of the bonds aforesaid, each calling for fifty dollars, and payable on the first day of April of the years 1861, 1862, 1863, 1864, 1865, 1866, 1867, & 1868, at the American Exchange Bank, in the city of New York, as will more fully appear from a copy of said coupons hereto attached and made a part hereof.

5th. Your petitioner further avers that he is the owner and holder of two hundred and eight of said coupons, the same being attached to the twenty six bonds above mentioned and described, and they being now the property of your petitioner.

6th. Your petitioner further avers that the said coupons are similar in form, alike in date and amount, differing only in the number and time of maturity, twenty-six being payable on the first day of April, 1861; twenty-six on the first day of April, 1862; twenty-six on the first day of April, 1863; twenty-six on the first day of April, 1864; twenty-six on the first day of April, 1865; twenty-six on the first day of April, 1866; twenty-six on the first day of April, 1867; and twenty-six on the first day of April, 1868.

7th. Your petitioner further avers that the said coupons executed for the interest due on the first day of April, in the years 1861, 1862,
9 1863, 1864, 1865 are fully due and unpaid, being one hundred and thirty in number, each for the sum of fifty dollars.

8th. Your petitioner further avers that the said defendant wholly neglected and failed to pay the interest accruing on said bonds for the years 1861, 1862, 1863, & 1864, & 1865, according to the terms of said bonds, and the coupons attached.

Wherefore, by the express terms of the said bonds, the principal thereof, as well as the interest having accrued for the years last named, is fully due and wholly unpaid.

Wherefore, for the causes aforesaid, defendant is indebted to plaintiff in the sum of twenty-two thousand dollars; for which amount, with interest and costs, pl'ff prays judgement and costs against the said defendant.

BISSELL & SHIRAS,
Att'ys for Pl'ff.

Endorsed: Filed October 2nd, 1865. W. G. Woodward, clerk cir. c't U. S.

10 *Copy of bonds.*

Bond No. 2.] [$500.

STATE OF IOWA, UNITED STATES OF AMERICA,
County of Winnebago:

The County of Winnebago, in the State of Iowa, hereby promises to pay to Martin Bumgardner or bearer, the sum of five hundred dollars on the first day of April, A. D. 1868, with interest annually at the rate of ten per cent., according to the interest warrants hereto attached and forming a part of this contract, principal and interest payable at the American Exchange Bank, in the city of New York. And it is expressly stipulated that any failure on the part of said county of Winnebago to pay the interest promptly, as specified in the coupons hereto appended, on any part of the bonds issued herewith, shall cause the principal of said bonds to fall immediately due and payable.

This obligation is one of a series of forty bonds of like tenor & date, being numbered consecutively from 1 to 40, inclusive, and amounting the aggregate to twenty thousand dollars. All of said bonds are issued in accordance with a vote of the people of said county,
11 and in pursuance of an order of the county court of Winnebago County, legally entered of record in the office of the county judge on the 9th day of March, A. D. 1860, in fulfilment of a contract entered into with said Martin Bumgardner for the erection of a court-house for said county of Winnebago.

And the people of said county have voted the levying of sufficient taxes from year to year to pay the principal and interest of each and all of said bonds as the same mature and become payable.

In witness whereof I, Robert Clark, county judge of said county have hereto set my hand, and affixed seal of the said county, this ninth day of March, A. D., 1860.

[SEAL.] ROBERT CLARK,
County Judge.

Attached to the bonds are eight coupons of the following form: one coming due on the first day of April in each year, commencing with 1861 and ending 1868, inclusive.

$50[

The County of Winnebago, State of Iowa, will pay fifty dollars, being interest of the within bond, No. 2, on the 1st day of April, 1861, at the American Exchange Bank, in the city of New York.

ROBERT CLARK,
County Judge.

12 In the circuit court of the United States for the district of Iowa.

On this day, to wit, the fifteenth day of October, A. D. 1867, comes the defendant, The County of Winnebago, by its attorney, Thomas F. Withrow, esq., and files its substituted and amended answer, which said substituted and amended answer is in words and figures following, to wit:

Amended and substituted answer.

In the circuit court of the United States for the district of Iowa.

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY.

Now comes the def't, Winnebago County, & for an amended answer to the petition herein, says:

I. The def't denies each and every of the allegations set out in said petition.

II. That the def't, for the further and separate answer to said petition expressly denies that The County of Winnebago made, executed, and delivered the several bonds and coupons attached and described
13 in said petition; that the said bonds are severally for the sum of five hundred dollars each; that the same were payable to Martin Bumgardner, bearer, on the 1st day of April, A. D. 1868, with interest at the rate of ten per cent. per annum; that the principals & interest were payable at the American Exchange Bank, in the city of New York; that it was provided in said bonds that a failure on the part of the def't to pay the interest on any of said bonds promptly, according to the terms thereof, should render the principal due and payable immediately; that said bonds were issued for a valuable consideration; that the pl'ff became the owner of said bonds and coupons for a valuable consideration before the maturity thereof; that he is now the owner and holder of the same; that the pl'ff is the owner of the coupons described in said petition; that the said coupons became due at the several times alleged in said petition; that the defendant has neglected and failed to pay the same, as in the several divisions of said petition alleged.

III. And the said def't, for further and separate defenses to the
14 several allegations in said petition set out and contained, says: That the said bonds recite upon their face that they were issued "in accordance with a vote of the people of said county, and in pursuance of an order of the county court of Winnebago County, legally entered of record in the office of the county judge on the 9th day of March, A. D. 1860, in fulfillment of a contract entered into with said Martin Bumgardner, for the erection of a court-house for the said County of Winnebago," and that "the people of said county have voted the levying of sufficient taxes from year to year to pay the principal and interest of each and all of said bonds as the same mature and become payable;" that said bonds purport to be executed by one Robert Clark, who assumed to act as county judge of said county; that in truth and in fact the record of said county and of the county court of said county did not, at the time of the execution and issuance of said bonds, show that any submission had ever been made to the electors of said county, of a proposition to issue said bonds, and no such
15 proposition ever was in fact submitted to said electors; that no order of the county court of Winnebago County had been legally or otherwise entered of record in the office of the county judge, of said county on the 9th day of March, A. D. 1860, or on any other day, authorizing the execution or issuance of said bonds and coupons, and that the people of said county, had never voted the levying of any tax whatever for the payment of the principal or interest or any part

thereof of said bonds; of all of which facts the plaintiff had notice when he became the holder of said bonds and coupons.

IV. And the def't, for further and separate answer to the several allegations of said pl'ff's petition, alleges that the bonds and coupons referred to were made, executed, and delivered by one Robert Clarke, who falsely and fraudulently pretended and assumed to act as county judge of said county; that the said Robert Clarke pretended to execute and deliver said bonds and coupons by virtue of an authority conferred by a vote of a majority of the legal voters of said county at an election ordered on the 4th day of February, 1860, for the 6th day of March,
16 1860, which election was held on the said 6th day of March, 1860; that at such election the following was the only proposition submitted to the electors of said county for decision:

"Whether the county judge shall, at the time for levying the other taxes for the year 1860, levy a special tax of seven mills on the dollar valuation, for the purpose of discharging the debt incurred by the county for the purpose of constructing a court-house in said county, & said tax to be levied from year to year until the debt is discharged, not exceeding ten years."

That, on the 9th day of March, 1860, the county judge of said county declared the result of said election by an entry in the records of his office, in the words and figures following, to wit:

"STATE OF IOWA, *Winnebago County*, ss:

"At a special election, held on the 6th day of March, 1860, in said county, the following proposition was submitted to a vote of the people: Whether the county judge of said county shall, at the time of levying the taxes for the year 1860, levy a tax of seven mills on the dollar, valuation, for the purpose of constructing a court-house in said county, and said tax to be levied from year to year until a sufficient
17 amount is raised for said purpose, not, however, to exceed ten years. The whole number of votes cast at said special election was twenty-nine, of which number twenty were in favor of said special tax, and nine were against said tax."

Which entry embraces the only record of the result of any election on said day entered, and was the entry and the only one made of the result of the election held on the said 6th day of March, 1860, on the proposition first above set forth; that the entry above-mentioned and set forth appeared upon the records of the county court of said county, when said bonds and coupons were issued; that the contract for the building of such court-house had not been entered into at the date of such submission, or at the date of such election; that at the date of such submission & election, the said defendant was not indebted in any sum, for the purpose of constructing a court-house in said county; that subsequent to such election, and on the said 9th day of March, 1860, the said county judge entered into a contract with one Martin Bumgardner, for the erection of a court-house in said county, which
18 was to be completed within three years from the first of April, 1860, of which an entry was made upon the records, in the office of said county judge, on the said 9th day of March, 1860; that, on the said 9th day of March, 1860, the said Robert Clarke, acting as county judge of said co., issued to the said Martin Bumgardner bonds, other than those described in pl'ff's petition, to the amount of twenty thousand dollars, which bonds were payable as follows: Two

thousand dollars, one year from the 1st of April, 1860; five thousand dollars, three years from the 1st day of April, 1860; five thousand dollars five years from the 1st day of April, 1860; and the balance in six years from the first day of April, 1860, of which execution and delivery of bonds, an entry was made upon the records in the office of said county judge; that said record of the county court of said county existed at the time of the execution & delivery of the bonds & coupons described in the petition, and that, at said time, it showed the execution and issuance of the bonds last above described; that subse-
19 quently thereto, the said Clark and the said Bumgardner agreed together to issue new bonds materially different from those which had been issued; that said agreement was made without any authority derived from the vote of the electors of said county; that the new bonds, of which those described in the pl'ff's petition are a part, were executed in compliance with said agreement; that the new bonds thus issued were, in many essential & material parts, different from those first issued to the said Bumgardner, as above recited; that the contract under which the said new bonds were issued was entered into, and the said bonds were executed and issued, while the said Clark and the said Bumgardner were beyond the county of Winnebago, and the State of Iowa, and in the State of New York; that, at the time the bonds and coupons described in the petition were executed and delivered, the clerk of the district court of the said county of Winnebago was, by virtue of the statute in such cases made and provided, the acting county judge of said county, and the said Robert Clark had no power to bind said county by the execution of said bonds and coupons; that, at the time of the is-
20 suance of the bonds and coupons described in the petition, no record was made of the same in the proper records of the county; that it then appeared by said records, which were open to the inspection of the public, that the county judge had never been authorized by a vote of the electors of said county to issue the bonds of said county, as recited on the face of the bonds described in the petition; that a contract for the construction of a court-house was entered into after the alleged vote of the 6th of March, 1860, and above set out, was taken, and the result declared; that the contract price of said building was the sum of twenty thousand dollars, for which the bonds of the county had been issued, and were then outstanding and uncancelled; that the bonds described in the petition were so issued without any consideration to said def't, and in fraud of def't's rights; that said pl'ff had knowledge of the facts above alleged when he became the owner of said bonds & coupons; that he is not a bona fide holder of said bonds and coupons for value, and without notice of def't's rights; but that he acqu'red the same with notice of def't's rights.

21 V. And the def't, for a further and separate defense to the several allegations set out in the pl'ff's petition, says: That the bonds and coupons therein described were not issued in accordance with a vote of the people of the county of Winnebago; that they were not issued pursuant to an order of the court of Winnebago County, legally entered of record in the office of the county judge of said county, on the 9th day of March, 1860, or any other day, in fulfillment of a contract entered into with Martin Bumgardner, for the erection of a court-house for said county of Winnebago, as in said petition alleged; that the people of said county had not, at the time of the issuance of said bonds and coupons, voted the levying of a sufficient tax from year to year to pay the principal and interest of each and all of said bonds

as the same should mature and become payable, as is also alleged in said petition; that the records have never shown any submission to a vote of the electors of said county of any proposition to issue said bonds; that no such proposition was ever in fact submitted to such electors; of all of which facts the pl'ff was charged with notice
22 when he became the holder of said bonds and coupons.

VI. And this def't, for a further and separate answer to the several allegations contained in the pl'ff's petition, says: That the pl'ff, Charles R. Lynde, did not become the holder of said bonds and coupons for a valuable consideration paid in the purchase thereof, without notice of defendant's rights; that said bonds and coupons, before they became the property of the pl'ff, were the property of his father, Charles W. Lynde; that the said Charles W. Lynde purchased said bonds and coupons in the month of April, 1860; that at the time he became the purchaser thereof the records of the county court of Winnebago County showed by the entries therein recorded, that, on the 4th day of February, 1860, the county judge of said county submitted to the electors of said county the following proposition to be voted upon by said electors on the 6th day of March, 1860, to wit:

"Whether the county judge shall, at the time of le'ying the other taxes for the year 1860, levy a special tax of seven mills on the dollar, valuation, for the purpose of discharging the debt incurred by
23 the county for the purpose of constructing a court-house in said county, and said tax to be levied from year to year until the debt is discharged, not exceeding ten years;" which was the only proposition touching the payment of debt incurred, or the raising of any moneys to be expended in the construction of a court-house in said county, submitted at that or any other date, as shown by said records.

That, on the 9th day of March, 1860, the county judge of said county declared the result of said election by an entry in the records of his office in the words and figures following, to wit:

"STATE OF IOWA, *Winnebago County, ss:*

"At a special election, held on the 6th day of March, 1860, the following proposition was submitted to a vote of the people: 'Whether the county judge of said county shall, at the time of levying the taxes for the year 1860, levy a tax of seven mills on the dollar, valuation, for the purpose of constructing a court-house in said county, and said tax to be levied from year to year until a sufficient amount is raised for said purpose, not however, to exceed ten years.' The whole num-
24 ber of votes cast at said special election was twenty-nine, of which twenty-one was in favor of said special tax."

Which entry is the only one of any result of any election on said day held, or of the result of any election on a question involving the raising of moneys to be expended in the construction of a court-house in said county; that no contract for the building of a court-house had in fact been entered into when said election was held, or when the result thereof was declared as above alleged, and there was no entry in said record showing any such contract; that the record of said county did not, at the dates of the submission of the question above set out, or at the date of said election, show any indebtedness upon the part of said county for the construction of a court-house; that, on the 9th day of March, 1860, the following order was entered of record in the proper record in the office of the county judge of said county, to wit:

"By an order of the county court of Winnebago County, Iowa, this

day made, it is hereby ordered that a contract for building a
25 court-house in said county was let to Martin Bumgardner for the sum of twenty thousand dollars; said court-house to be built on the public square in the village of Forrest City, in said county. Said house to be built after a plan and specification now on file in the office of the county judge of said county, marked A, and that the said court-house is to be completed within three years from the first day of April, 1860.

"ROBERT CLARKE,
"*Co. Judge.*"

Which was the only entry of record of the letting of any contract for the construction of a court-house in said county of Winnebago.

That on the same day the following order was made and entered of record in the proper records of the county judge's office in said county, to wit:

"STATE OF IOWA, *Winnebago County, ss:*

"In accordance with a vote of the people of said county, and in pursuance of an order of the county court of said county this day made, it is hereby ordered that bonds on said county to the amount of twenty thousand dollars be issued to Martin Bumgardner, in the fulfill-
26 ment of a contract entered into with said Bumgardner for the erection of a court-house in said county, said bonds to draw interest at the rate of ten per cent. per annum from the 1st day of April, 1860, said bonds to be issued as follows, to wit, two thousand dollars to be due one year from the 1st day of April, 1860, and five thousand dollars to be due three years from the 1st day of April, 1860, and the balance, eight thousand, to be due six years from the first day of April, 1860.

"March 9, 1860.

"ROBERT CLARKE,
Co. Judge."

That, on the same day, and immediately after said entry last above set out was made by the county judge of said county, in the proper record of the county court of said county, the following entry was made of record in the proper records by the said county judge, to wit:

"STATE OF IOWA, *Winnebago County, ss:*

"County bonds were issued this day to the amount of twenty thousand dollars in *the* accordance with the above order.

"March 9, 1860.

"ROBERT CLARKE,
Co. Judge."

27 That, on the said 9th day of March, 1860, the said Robert Clarke did, as county judge, issue, as is recited in said order last above set out, to the said Martin Bumgardner bonds, other than those described in the pl'ff's petition, to the amount of twenty thousand dollars; that, at the time the bonds set out in the petition were issued, and at the time the said Charles W. Lynde became the holder of said bonds, the entries above set out were of record in the proper record of *of* the county court of Winnebago County, Iowa, and that, at that time, there were no other entries in said records relating to the issuance of

any bonds of said county, or to the raising of money in any other manner, to be used in paying a debt incurred, or to be expended in payment for the construction of a court-house in said county; that said records were then open to the inspection of the public, and the said Charles W. Lynde was charged with notice of the contents thereof; that, at the time of the issuance of said bonds and coupons, the records of the county of Winnebago showed affirmatively that the county judge had no authority, derived from a vote of the electors
28 of said county, to execute the same; that the said Charles W. Lynde was not a bona fide holder of said bonds & coupons for a valuable consideration paid without notice of def't's right; that, on the 7th day of June, 1860, the said Charles W. Lynde departed this life, leaving a will, by which the bonds and coupons described in the petition were bequeathed to the pl'ff, Charles R. Lynde, his son; that the pl'ff, Charles R. Lynde, did not become the holder of said bonds for a valuable consideration, without notice of def't's rights, but holds the same charge' with any all defenses which could be interposed to the same in the hands of the said Charles R. Lynde, his father.

THO. F. WITHROW,
Att'y for Def't.

(Endorsed:) Filed Oct. 15th, '67. W. G. Woodward, clerk.

29 And afterwards, to wit, on the 11 day of May, A. D. 1866, comes the plaintiff, by his attorney', Bissell & Shiras, and files his demurrer to the 4th & 5th grounds of defense, which said demurrer is in the words and figures following, to wit:

CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO.

Now comes the said plaintiff, and demurs to the fourth and fifth grounds of defense set up in the answer of defendant, and, as ground of such demurrer, sets forth the following:

1st. There is no defense to said bonds set out in said parts of said answer.

2nd. It is not necessary that there should be a vote of the people of the county to authorize the issuance of bonds of the county to pay for the building of a court-house.

3rd. The recitals on the bonds, under the hands of the proper officers of the county and the seal of said , are conclusive on said county, and said county is estopped from denying the same.

BISSELL & SHIRAS.

30 4th. The vote set out in said fifth ground of defense was sufficient authority to the county judge to issue said bonds.

B. & S.

(Endorsed:) Filed May 11th, 1866. W. G. Woodward, clerk.

31 And on this day, to wit, the 3d day of September, A. D. 1866, comes the pl'ff, by his attorneys, and files his notice to defendant to take out a commission to take the deposition of Charles R. Lynde, which said notice is in words and figures following, to wit:

In the circuit court of the United States for the dist. of Iowa.

CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO.

To the County of Winnebago, and T. F. Withrow, att'y for said county:

You are hereby notified that, on the 3d day of Sept., 1866, a commission will be sued out of the office of the clerk of said court to take the testimony of said Charles R. Lynde, before any notary public in the county of New York, in the State of New York, upon the interrogatories hereto attached.

BISSELL & SHIRAS,
Att'ys for Pl'ff.

32 *Interrogatories to Charles R. Lynde.*

1st. What is your name, age, occupation, and place of residence?

2d. How did you become possessed of the bonds of Winnebago County, Iowa, to the amount of thirteen thousand dollars, now involved in the foregoing-entitled suit?

3d. What consideration did you pay for said bonds?

4th. If you say you became possessed of said bonds as the heir of Charles W. Lynde, your father, then state how your father became possessed of them, and what consideration he paid for the same.

5th. From whom did your father buy said bonds?

6th. Is your father now living, and if not, when did he die?

7th. Is the man from whom your father bought the bonds now living, and if not, when did he die?

33 8th. Did your father keep any books of account; and if so, do said books show anything about the purchase of said bonds?

9th. Have you examined the books and the papers of the man who sold the bonds to your father; and if so, do they show the consideration paid by your father for said bonds?

10th. State all you know in regard to the consideration paid by your father for said bonds.

BISSELL AND SHIRAS,
Att'ys for Pl'ff.

(Endorsed:) I accept service of the within notice & interrogatories' and consent that a commission at once——

THO'S F. WITHROW,
For Winnebago Co.

34 And on the same day, to wit, the 3d day of September, 1866, comes the defendant, by its attorneys, and files its cross-interrogatories to said Charles R. Lynde, which cross-interrogatories *is* in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

CHA'S R. LYNDE
vs.
THE COUNTY OF WINNEBAGO.

Cross-interrogatories.

1st. If you state that your father bought the bonds in suit, give the

name of the party from whom he bought, the date of the purchase, and the sum he paid for the same.

2d. State what sum you ever paid for said bonds.

3d. If you say that your father purchased the bonds, give the name of the party from whom he purchased. If they were purchased for him by a broker or agent, give the name of the broker or agent.

35 4th. If you purchased the bonds state whether or not you did it through a broker or agent; and if they were purchased through a broker or agent, give his name and the place and the date of the purchase.

THO'S F. WITHROW,
For Winnebago Co.

36 And on the same day, to wit, September 3d, 1866, there issued out of the clerk's office of said court a dedimus potestatum, which said dedimus potestatum is in the words and figures following, to wit:

Dedimus potestatum.

Circuit court of the United States, district of Iowa, ss:

To any notary public in the county of New York and State of New York:

Know ye that, in confidence of your prudence and fidelity you have been appointed, and by these presents you are invested with full power and authority, to examine Charles R. Lynde, on his corporal oath, as witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein said Charles R. Lynde is plaintiff and The County of Winnebago, in the State of Iowa, is defendant, on the part of the plaintiff upon the interrogatories annexed to this commission.

37 And therefore you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said Charles R. Lynde to come before you and then and there examine him on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying notice and interrogatories and this commission, under your seal, sealed up and endorsed with the names of, the parties litigant, and the word "deposition" on the cover thereof, unto the said circuit court at Des Moines, Iowa, to the clerk thereof, with all convenient speed.

SEAL OF THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF IOWA.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 3d day of September, 1866, and in the 91st year of the independence of the United States of America.

Attest: W. G. WOODWARD, *Clerk.*

38 To which dedimus potestatum the following note was appended:

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness if the party requ're it. The whole being read over by or to the witness must be by him subscribed and sworn to in the usual manner. All exhibits produced before the

person taking the deposition or proved or referred to by any witness, or correct copies thereof, must be appended to the depositions and returned with them unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

39 And on this day, to wit, Oct. 3, 1866, the said dedimus potestatem was returned into the clerk's office of said court, and by him filed with the testimony of said Charles R. Lynde attached, which said testimony is in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

CHARLES R. LYNDE }
vs.
THE COUNTY OF WINNEBAGO. }

Charles R. Lynde, of the city of New York, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the said plaintiff and defendants respectively, doth depose and say as follows:

First interrogatory. What is your name, age, occupation, and place of residence?

To the first interrogatory he saith: My name is Charles R. Lynde; my age is forty-three years; I have no occupation; my residence is in New York City.

40 Second interrogatory. How did you become possessed of the bonds of Winnebago County, Iowa, to the amount of thirteen thousand dollars, now involved in the foregoing entitled suit?

To the second interrogatory he saith: I became possessed of said bonds as the heir of Charles W. Lynde, my father, who devised them to me in his will.

Third interrogatory. What consideration did you pay for said bonds?

To the third interrogatory he said: I paid no consideration.

Fourth interrogatory. If you say you became possessor of said bonds as the heir of Charles W. Lynde, your father, then state how your father became possessed of them, and what consideration he paid for the same.

To the fourth interrogatory he saith: The bonds were sold to my father by Thomas Ripton for one hundred shares of the stock of
41 the New York Central Railroad Company, which were worth eight thousand dollars.

Fifth interrogatory. From whom did your father buy said bonds?

To the fifth interrogatory he saith: From Thomas Ripton.

Sixth interrogatory. Is your father now living; and if not, when did he die?

To the 6th interrogatory he saith: He is not living; he died June 7th, 1860.

Seventh interrogatory. Is the man from whom your father bought the bonds now living; and if not, when did he die?

To the seventh interrogatory he saith: He is not living. I do not know the date of his death.

Eighth interrogatory. Did your father keep any books of account; and if so, do said books show anything about the purchase of said bonds?

To the 8th interrogatory he saith: He did not.

42 Ninth interrogatory. Have you examined the books and papers of the man who sold the bonds to your father; and if so, do they show the consideration paid by your father for said bonds?

To the 9th interrogatory he saith: I have not.

Tenth interrogatory. State all you know in regard to the consideration paid by your father for said bonds.

To the 10th interrogatory he saith: I have stated all that I know in regard to said consideration.

CHA'S R. LYNDE.

43 Cross-interrogatories:

First cross-interrogatory. If you state that your father bought the bonds in suit, give the name of the party from whom he bought, the date of the purchase, and the sum he paid for the same.

To the first cross-interrogatory he saith: He bought the said bonds from Thomas Ripton on the ninth of April, 1860, and he paid for the same one hundred shares of New York Central Railroad stock, which was then worth eight thousand dollars.

Second cross-iuterrogatory. State what sum you ever paid for said bonds.

To the 2d cross-interrogatory he saith: I paid no money for said bonds. They were bequeathed to me by my father.

Third cross-interrogatory. If you say your father purchased the
44 bonds, give the name of the party from whom he purchased; if they were purchased for him by a broker or agent, give the name of the broker or agent.

To the 3d interrogatory he saith: He purchased said bonds from Thomas Ripton; he purchased them himself.

Fourth cross-interrogatory: If you purchased the bonds, state whether or not you did it through a broker or agent; and if they were purchased through a broker or agent, give the name and the place and the date of the purchase.

To the 4th cross-interrogatory he saith: I did not purchase said bonds; they were bequeathed to me by my father.

CHA'S R. LYNDE.

UNITED STATES OF AMERICA,
State, City, & County of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, James A. Ruthven, a notary public in and for the State of New York, by letters-patent under the great
45 seal of said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that the foregoing deposition was taken, subscribed, and sworn to by Charles R. Lynde, the deponent therein named, before me, on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-six, at the city of New York aforesaid, the same having been first read over to said deponent by me.

In testimony whereof I have subscribed my name and caused my notarial seal of office to be hereto affixed the 29th day of September, A. D. 1866.

[SEAL.] JA'S A. RUTHVEN,
Notary Public in and for New York County.

(Endorsed:) Opened and filed by me, Oct. 3, '66. W. G. Woodward, clerk C. C.

46 And on this day, to wit, the 11 day of May, A. D. 1869, comes the parties in said entitled cause, and file their stipulation, which said stipulation is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States, district of Iowa.

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY.

It is agreed between the parties hereto that the stipulation hereto appended, entered into by the parties in a former suit, entitled Charles R. Lynde v. The County of Winnebago, which was pending in this court between the parties hereto in relation to the subject matter hereof, shall be offered and received as evidence in this. It is also agreed that all depositions taken by R. G. Orwig as commissioner appointed by the court in said case, shall be offered and received as evidence on the trial of this, subject to any exceptions to any part of the same upon the ground of competency or relevancy.

BISSELL & SHIRAS,
Att'ys for Pl'ff.
THO'S F. WITHROW,
Att'y for Def't.

47 *Stipulation referred to in last stipulation.*

Circuit court of the United States, district of Iowa.

CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO.

It is agreed between the parties to the above-entitled suit, that the following records of the county court of Winnebago County, Iowa, viz: The minute book, warrant book, and county court record, being the said several records of said office, from the organization of the county to the month of November, 1861, were destroyed by fire in the month of November or December, 1861, and that the same cannot now be examined or produced in evidence on the trial of this cause; and it is further agreed that all papers, in said office during said period, with the exception of those relating to the probate business, were also burned at the same time, and cannot be produced in evidence.

BISSELL & SHIRAS,
For Pl'ff.
WITHROW & SMITH,
For Def't.

48 *Stipulation.*

Stipulation, order of court thereon, and deposition of the parties referred to in stipulation filed the day of 186 .

In the circuit court of the United States, district of Iowa.

CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO.

It is hereby stipulated between F. E. Bissell, of counsel for the plaint-

tiff, and Withrow & Smith, of counsel for the defendant, that R. G. Orwig shall be appointed by the court a special commissioner to take the depositions of Robert Clarke, Martin Bumgardner, M. P. Rosencrans, and Jno. L. Blowers; that said depositions shall be taken at the office of Withrow & Smith, in Des Moines, Friday, the 23d day of October, 1863, and that they shall be read in evidence, on the trial of said cause, subject only to objections to their relevancy and competency, or to objections noted by the com'r.

Des Moines, Oct. 23.

BISSELL, & SHIRAS, & D. N. COOLEY,
For Plff.
WITHROW, & SMITH, & M. P. ROSENCRANS,
For Deft.

49 In the circuit court of the United States for the fourth district of Iowa.

CHARLES R. LYNDE, PL'FF,
vs.
THE COUNTY OF WINNEBAGO, DEF'T. } No. 163.

The depositions of Robert Clark, John S. Blowers, M. P. Rosencrans, and Martin Bumgardner, witnesses in the above-entitled cause, on behalf of the defendant, taken before me, R. G. Orwig, commissioner, at the office of Withrow & Smith, in the city of Des Moines, Polk County, Iowa, this 23d day of October, 1863, in pursuance of the following order issued by the said court.

R. G. ORWIG,
Commissioner.

Fees, $5 25.

R. G. O.

At a term of the circuit court of the United States in & for the district of Iowa, begun & holden at Des Moines, on the 20th day of October, A. D. 1863, the following, among other proceedings, were had:

FRIDAY, *October* 23, 1863.

50 CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO. } No. 163.

Upon application of the parties in the above citation, it is hereby ordered that Reuben Orwig be, & he is hereby, appointed a commissioner, with authority to take the testimony in writing of witnesses in the above-named suit, and he is hereby required to return such testimony to the above court, now sitting, at as early a time as practicable.

In testimony whereof I have hereunto set my hand & the seal of the said court this 23d day of October, A. D. 1863.

W. G. WOODWARD,
Clerk of the said Circuit Court.

51 ROBERT CLARK sworn; aged 35; residence, Forest City, Winnebago County, Iowa, answers as follows:

Interrog. 1. Who was county judge in Winnebago Co., on the 9th day of March, 1860?

1st answer. I was.

Int'r 2. State how long you had been county judge at that time.

2d answer. From October, 1857.

Inter. 3. State whether or not you had any predecessor in that office?

3d answer. No, sir; I was the first county judge elected in that county after its organization.

Int'r 4. State whether or not you kept a record of your official acts while in office?

4th answer. I did.

Inter. 5. State, if you know, where the records of the county judge's office, in Winnebago County, now are.

5th answer. They were burned up.

Inter. 6. When?

6th answer. In November or December, 1861.

52 Inter. 7. State, as nearly as you can, what records were burned at that time?

7th answer. The judge's minute-book, warrant-book, and county court record. The probate record was not burned.

Inter. 8. In whose custody were those records when burned?

7th answer. In the custody of the county clerk, or clerk of board of supervisors.

Inter. 9. State if you was county judge when these records were burned?

9th answer. I was.

Inter. 10. State whether or not you was county judge from 9th of March, 1860, up to the time the records were burned?

10 answer. I was.

Inter. 11. State whether or not any copies of those records were saved by the county?

11th answer. I don't know of any.

Inter. 12. If any search has been made for any of those records, to your knowledge, state when and by whom it was made?

53 12th answer. I don't know of any search being made, except by myself. I asked the clerk whether any records had been saved, and he said there was none.

(Objection. Objected to as hearsay by Mr. Bissell, for plaintiff.)

Inter. 13. State whether or not there was, prior to the 9th day of March, 1860, a proposition submitted to the voters of said county relating to the construction of a court-house in said county, and a special election ordered to determine the same?

13th answer. There was a proposition submitted to the people in reference to the court-house.

Inter. 14. Examine Exhibit A, and state whethor or not it embraces the proposition and order submitting the same to the legal voters of said county relating to the construction of a court-house in said county, to which you have referred in the foregoing answer?

14th answer. (After examining Exhibit A.) I think it does in substance; cannot say whether the words are the same.

Inter. 15. State what other proposition was submitted to the legal voters of said county in relation to a court-house, if any?

54 15th answer. I think there was no other proposition in reference to a court-house.

Inter. 16. State whether or not, prior to the 9th day of March, 1860, any proposition was submitted to the legal voters of said county to borrow money or to issue the bonds of said county to raise moneys to be expended in the constructon of a court-house or other public building at any general or special election in and for said county, and

whether or not any special election was ordered by the county court of said county to determine any such proposition, prior to the 9th day of March, 1860.

16th answer. There was but the one proposition, that referred to in Exhibit "A."

Inter. 17. State, if you know, who made the entry in the records of the county court of said county, of the order set out in Exhibit A?

17th answer. I think I did.

Inter. 18. State whether or not the order set out in Exhibit A, is a correct copy of the order as you entered it of record in the records of the county court of said county.

55 18th answer. I think it is, but cannot say whether it is worded exactly like it. The substance is the same.

Inter. 19. Examine Exhibit B, and state what election it refers to, and when, if you know, it was made of record in the county judge's office of said county?

19th answer. It refers to a special election held on the 6th day of March, 1860; could not say what day it was made of record, but think it was on or before the 9th day of March, 1860.

Inter. 20. State who entered the result of that election of record in the office of the county judge.

20th answer. I did.

Inter. 21. State, after you examine Exhibit B, whether it is a correct copy of the entry you made of record?

21st answer. I think it is.

Inter. 22. State when the election to which it refers was ordered by the county court?

22nd answer. Cannot say exactly, but it was prior the 6th day of March, 1860.

56 Inter. 23d. State whether or not it was the same election ordered by the county court in the order of February 4th, 1860, and set out in Exhibit A.

23d answer. It was.

Inter. 24. State whether or not any result of an election to determine any question relating to the construction of a court-house or other public buildings in said county, or to the borrowing of money or issuing of bonds for such purpose was made of record in the office of the county judge of said county, prior to or on the 9th day of March, 1860.

24th answer. I think not.

Inter. 25. Examine Exhibit C, and state whether or not on the 9th day of March, 1860, you executed and delivered to Martin Bumgardner, the bonds of said county in the form set out in said exhibit. If you answer yes, state the number, and the several amounts of said bonds.

(Objection. Objected to by Mr. Bissell for the plaintiff, for the reason that it is irrelevent.)

25th answer. I did. I think there were eighty (80) bonds, 57 amounting in their aggregate to twenty thousand dollars; some were for one hundred dollars, and some five hundred dollars.

Inter. 26. State what election or elections are referred to in the last two paragraphs of Exhibit C?

(Objection. Objected to by Mr. Bissell, for plaintiff, for reason that the exhibit speaks for itself.)

26th answer. The elections referred to in Exhibit B, held on the 6th day of March, 1860, and also referred to in Exhibit A.

Inter. 27. State severally the dates of the ordering of the election by the county court, and the holding of the same, and the entry of the

result thereof of record in the office of the county judge, by which you were authorized to issue said bonds to Bumgardner.

(Objection. Objected to by Mr. Bissell, for pl't'ff, for the reason that it is irrelevant, and the records speak for themselves.)

27th answer. On the 4th day of February, 1860, there was an election ordered, and the election was held on the 6th day of March, 1860, and the result was entered of record on the 9th of March, 1860.

58 Inter. 28. State the amount of the indebtedness of the county of Winnebago, on the 6th day of March, 1860, for the construction of a court-house.

(Objection. Objected to by Mr. Bissell, for pl't'ff, as being irrelevant.)

28th answer. There was no indebtedness that was made a matter of record.

Inter. 29. State what indebtedness, if any, that was not of record.

(Objection. Objected to by Mr. Bissell, for pl't'ff, as being incompetent.)

29th answer. I don't think there was any; none that I know of. The matter was talked over, but was not made a matter of record.

Inter. 30. State what matter was talked over.

(Objection. Objected to by Mr. Bissell, for pl'ff, as being hearsay, irrelevant, and incompetent.)

30th answer. The matter of building a court-house was talked over.

Inter. 31. State whether or not any contract was entered into, on or before the 6th day of March, 1860, between The County of Winnebago and any other party or parties, by which an indebtedness, on the

59 part of said county to such parties, was created for the construction of a court-house for said county.

31st answer. No written contract.

Inter. 32. State what bonds of the said county, in addition to those already mentioned, you executed and delivered to Martin Bumgardner or any other person on the 9th day of March, 1860.

32d answer. There were other bonds issued to him. They were forty (40) bonds for five hundred dollars each, which the county records show to have been issued on the 9th day of March, 1860.

(Objection. Mr. Bissell, for pl'ff, objects to that part of the answer, which refers to the records, on the ground that it should be proven by the records only.

Inter. 33. Examine Exhibit D, and state whether or not it is a correct copy of the entry relating to the building of a court-house, and the issuing of bonds to Martin Bumgardner, on the 9th day of March, 1860, as said entry was made in the records of the county court of Winnebago County.

33d answer. I think it is a correct copy of the entry.

60 Inter. 34. State whether there was any other entry in said records relating to the construction of a court-house or the issuing of the bonds of the county, as of the 9th of March, 1860.

34th answer. I think there was.

Inter. 35. State, as nearly as you can remember, the contents of the other entry or entries that were made as of the 9th of March, 1860.

(Objection. Objected to by Mr. Bissell, for the pl't'ff, as being incompetent.)

35th answer. I think there was an order made a matter of record, canceling the first bonds.

Inter. 36. Examine Exhibit E, and state whether or not it is a correct copy of the entry made as of the 9th of March, 1860, canceling the bonds to which you refer in the last answer.

36th answer. It is.

Inter. 37. State whether or not Exhibit' D and E set out the only entries made in said records relating to the construction of a court-house and issuing said bonds as of the 9th of March, 1860.

61 37th answer. I think not.

Inter. 38. State what other entry or entries, as of that date, were made relating to the same subject-matter.

(Objection. Objected to by Mr. Bissell, for pl'ff, as being incompetent, and must be proven by the production of the record itself.)

38th answer. I think there was an order of the county court, ordering bonds to be issued to Martin Bumgardner for twenty thousand dollars, and that a copy of the bonds was made a matter of record.

Inter. 39. State whether or not that copy was the same as Exhibit C.

39th answer. Yes, it was. There was another class of bonds, a copy of which was also made of record.

Inter. 40. State when the order, set out in Exhibit E, was actually entered of record in the records of the county court of Winnebago County.

(Objection. Objected to by Mr. Bissell, for pl't'ff, as irrelevant, and for the reason that it is to contradict the record.)

62 40th answer. I cannot tell exactly, but I think it was some time after the 9th day of March, 1860; perhaps six weeks after that time.

Inter. 41. State whether the additional forty bonds to which you refer in the above answers were executed and delivered on the 9th day of March, 1860.

41st answer. I think they were not. I think it was a little after the 9th day of March, 1860.

Inter. 42. State how long after.

42nd answer. I think it was within two weeks after the 9th day of March, 1860.

Inter. 43. State where you were when you signed and delivered said bonds.

43d answer. In the city of New York.

Inter. 44. State how and where the seal of the county of Winnebago was attached to said bonds.

44th answer. It was attached in the usual manner, and done in the city of New York.

Inter. 45. State fully all you know in regard to the signing,

63 sealing, and delivery of the forty (40) additional bonds to Martin Bumgardner before referred to. Tell the particulars when, where, and how it was done.

45th answer. Mr. Bumgardner and I took the original bonds to New York and found they were not salable; and, in order to sell them, we issued new bonds in a different form and the old bonds were destroyed. We got a new seal made for the county of Winnebago and attached it to the bonds. The bonds were signed and the seal attached somewhere on Pine street, in the city of New York, I do not remember the exact place, and were delivered there to a party to dispose of them. Cannot now remember the name of the party to whom they were delivered.

Inter. 46. State whether or not the entry shown by Exhibit E was then of record in the records of the county judge's office in the county of Winnebago.

46th answer. I don't think it was. I know it was not.

Inter. 47. How long after the additional bonds were executed was it before said entry was made of record?

47th answer. I think about six weeks; it might have been a little longer.

64 Inter. 48. State whether it was made of record before the sale of the additional bonds.

48th answer. It was not.

Inter. 49. State whether or not at the time these transactions occurred in the city of New York, the records of the county court in Winnebago County showed that other bonds had been issued to Martin Bumgardner, and whether or not such record showed the said first bonds issued had been cancelled.

49th answer. The record showed that the first bonds had been issued, but did not show that they were cancelled.

Inter. 50. State, as definitely as you can, the date of your leaving Winnebago County to go to New York, and how long you were absent at the time the forty (40) additional bonds were issued in New York.

50th answer. I left Winnebago County, I think, on the 12th day of March, 1860, and I returned not far from the 1st day of May, 1860.

Inter. 51. State if it was during this absence that the bonds were executed in New York.

51st answer. It was.

65 Inter. 52. State, if you know, whether any person acted as county judge during your absence.

52d answer. As shown by the records, I think there was. There was one county order issued during that time.

(Objection. Objected to by Mr. Bissell, for the reason that the matter should be shown by the record.)

Inter. 53. State whether the record showing that fact was among the burned records.

53rd answer. It was.

Inter. 54. State whether or not the county clerk was paid on your return for discharging the duties of county judge during your absence.

54th answer. He was.

Inter. 55. State who audited his account and who drew a warrant for payment of the same.

55th answer. The county judge, I suppose.

Inter. 56. Who was the county judge?

56th answer. I was.

66 Inter. 57th. Examine the plaintiff's petition and exhibit appended thereto, and state whether or not the bonds therein described were of the additional bonds of which you have spoken, and whether or not they were signed, sealed, and delivered in the city of New York.

57th answer. (After examining petition and exhibit.) I should think this was a true copy of one of them. I see they are all described, and this a copy of them.

Inter. 58. State when and where the bonds described in plaintiff's petition were signed, sealed, and delivered by you as county judge of Winnebago County.

58th answer. About the 20th of March, 1860, in the city of New York.

Inter. 59. State when the vote of the people of Winnebago County, to which reference is made in the bonds, and when the order of the county court therein referred to, was made.

59th answer. The order of the county court was made on the 9th day of March. I think the vote was had on the 6th day of March, 1860. I understand the order referred to was the order for issuing the

67 bonds.

Cross-examined by Mr. Bissell, for plaintiff.

X-ex. Inter. 1. How long have you resided in Winnebago County?

1st answer. Between seven and eight years.

Inter. 2. Did you keep any papers relating to the business of your office besides the entries in the books of record?

2nd answer. Yes.

Inter. 3. What did you do with the books of record and papers referred to, when they passed out of your hands?

3rd answer. I delivered them to the clerk of the board of supervisors, county clerk, and clerk of the district court.

Inter. 4. What books did you deliver to him?

4th answer. Warrant book, minute book, county court record, road book, and fee book.

Inter. 5. What papers did you deliver to him?

(Objection. Objected to by Mr. Withrow, for the reason that
68 the clerk's receipt is the best evidence.)

5th answer. Bonds of county officers, and all papers relating to the subject-matter of the books which I delivered to him.

Inter. 6. When did you deliver these books and papers?

6th answer. I think it was the first Monday in January, 1861, or about that time.

Inter. 7. Did you and the county clerk occupy the same, or different offices?

7th answer. Different offices?

Inter. 8. When and where did you last see the county court record?

8th answer. I saw it in the county clerk's office the last time in June, 1861, and I think I saw it there in October, 1861.

Inter. 9. Did you see it on the day of the fire referred to in the direct examination?

9th answer. I did not.

Inter. 10. When did you first see Exhibit A?

10th answer. I don't know that I saw it before to-day; think I saw it to-day for the first time.

69 Inter. 11. Did you ever compare that paper with the record entry?

11th answer. I did not.

Inter. 12. Did you ever see Exhibits B, C, and E, before to-day?

12th answer. I did not.

Inter. 13. Did you every compare them with the original record?

13th answer. I did not.

Inter. 14. What did you, as county judge, do with these forty bonds, i. e., to whom did you, in behalf of the county, deliver them?

14th answer. I delivered them to Bumgardner.

Inter. 15. Were they delivered to him as pay for building a court-house?

15th answer. They were.

Inter. 16. Had you, in behalf of the county, entered into a contract with Bumgardner in reference to building a court-house, prior to the time that you delivered these forty bonds to him?

16th answer. I had.

Inter. 17. Were the eighty bonds first issued to Bumgardner
70 taken up and cancelled, and the forty bonds referred to issued in lieu of them?

17th answer. They were.

Inter. 18. For what purpose did you go to New York?

18th answer. One object was to assist Mr. Bumgardner in disposing of a part of his bonds; also, on private business.

Inter. 19. Was you to have any part of the proceeds of the bonds which Mr. Bumgardner should sell?

19th answer. I was not.

Inter. 20. Was you to have any share of the profits, or interest in the contract for building the court-house, entered into between you and Mr. Bumgardner?

20th answer. I was not.

Inter. 21. What was done with the seal you had made in New York?

21st answer. It is in use now in Winnebago County.

Inter. 22. Did Mr. Bumgardner go to and return from New York with you?

22d answer. He did.

71 Reëxamined by Mr. Witherow, for defendant:

Re-ex. inter. 1. Do you hold any of these bonds now?

1st answer. I do not.

Inter. 2. State whether or not, when you delivered these bonds to Bumgardner, the county was indebted to him?

2nd answer. I suppose it was, according to his contract.

Inter. 3. State whether or not the county contracted to pay him in advance for building the court-house?

3d answer. The county contracted to issue him bonds in advance.

Inter. 4. State when that contract was entered into between the county and Bumgardner?

4th answer. On the 9th day of March, 1860.

Inter. 5. Is that contract spread on the record?

5th answer. I think not in full; I think the contract is, but not the plans and specifications.

Inter. 6. State whether or not Exhibit D is the record entry of the contract?

72 6th answer. I think it is.

Inter. 7. State whether the agreement to issue bonds in advance was merely a verbal agreement between you and Bumgardner, or whether it was reduced to writing?

7th answer. I think it was reduced to writing, and I think it was made a matter of record.

Inter. 8. State whether or not you remember any other record entry of the contract except that shown in Exhibit D?

8th answer. I think I do.

Inter. 9. State when it was made.

9th answer. I think it was made about the same time—the 9th day of March, 1860.

ROBERT CLARK.

73 EXHIBIT A.—R. G. O.

STATE OF IOWA,
Winnebago County, ss:

By an order of the county court of Winnebago County, Iowa, this day made, it is hereby ordered that there be a special election held in the several townships of said county, on the sixth day of March, A. D. 1860, for the purpose of submitting the following question to a vote of the people, to wit,

Whether the county judge shall at the time of levying the other taxes

for the year A. D. 1860, levy a special tax of seven mills on a dollar valuation, for the purpose of discharging the debt incurred by the county for the purpose of constructing a court-house in said county, and said tax to be levied from year to year until the debt is discharged, not to exceed ten years. By this order all legal voters are allowed and permitted to vote, & every person voting at said special election shall have the right to use a ticket with the words written or printed thereon, for special tax, or, against special tax.

Feb. 4, 1860.

ROBERT CLARK,
Co. Judge Winnebago Co., Iowa.

74 I do certify the foregoing to be a true copy of the original as entered of record in my office.

In testimony whereof, I have set my hand and affixed my seal on this 3 day of October, A. D. 1861.

[L. S.]

A. K. CURTIS,
Clerk Board Supervisors of said County.

Exhibit A.

75 EXHIBIT B.—R. G. O.

STATE OF IOWA,
Winnebago County, ss:

At a special election held on the sixth day of March, A. D. 1860, in said county, the following proposition was submitted to a vote of the people whether the county judge of said county shall, at the time of levying the other taxes for the year 1860, levy a tax of seven mills on a dollar valuation, for the purpose of constructing a court-house in said county, and said tax to be levied from year to year until a sufficient amount is raised for said purpose, not, however, to exceed ten years. The whole number votes cast at said special election was twenty-nine, of which number twenty were in favor of said special tax, and nine were against said tax.

March 9, 1860.

(Signed) ROBERT CLARK,
Co. Judge.

I certify the above is a true copy of the original as entered of record in my office, Oct. 3d, A. D. 1861.

[L. S.]

A. K. CURTIS,
Clerk Winnebago County, of District Court, & of Board of Supervisors.

Exhibit "B"— R. G. O.

76 EXHIBIT C.—R. G. O.

No. . S. .

UNITED STATES OF AMERICA,

OF

STATE [ ] IOWA,

County of Winnebago.

The county of Winnebago, in the State of Iowa, hereby promise to

pay to Martin Bumgardner, or bearer, the sum of hundred dollars on the first day of April 186 , with interest at the rate of ten per cent. per annum, from the first day of April, 1860, the principal and interest payable at the American Exchange Bank, in the city of New York. This obligation is one of a series of eighty bonds of like date, the entire number being numbered consecutively from 1 to 80, inclusive, and amounting in the aggregate to twenty thousand dollars, of which aggregate amount one-tenth, to-wit, numbers 1 to 12, inclusive, are payable two years from the first day of April, 1860; and one-fourth, numbers 13 to 30, inclusive, are payable three years from the first day
77 of April, 1860; and one-fourth, numbers 31 to 48, inclusive, are payable four years from the first day of April, 1860; and one-fourth numbers 49 to 66, inclusive, are payable in five years from the first day of April, 1860, and three-twentieths, numbered 67 to 80, inclusive, are payable six years from the first day of April, 1860; and of each class payable in each of said years—the first ten numbers of each class are for one hundred dollars each, and the balance are for the sum of five hundred dollars each.

All of said bonds are issued in accordance with a vote of the people of said county, and in pursuance of an order of the county court of Winnebago County, legally entered of record in the office of the county judge on the 9th day of March, 1860, in fulfillment of a contract entered into with the said Martin Bumgardner for the erection of a court-house for the said county of Winnebago; and the people of said county have voted the levying of sufficient taxes from year to year to pay the
78 principal and interest on each of said bonds so soon as they mature and become payable.

In witness whereof I, , county judge of said county, have hereunto set my name and affixed the seal of said county, this 9th day of March, 1860.

On the back of said "Exhibit C" is endorsed the following affidavit, to wit:

STATE OF IOWA,
County of Hancock:

I, Charles C. Doolittle, a citizen of said county, do solemnly swear that I am a practical printer, and that as such printer, in the discharge of business, I did print for the county of Winnegabo, on the order of the county judge of said county eighty bonds, of which the within is a specimen copy retained in my office, and is an exact specimen of the said bonds described within, and which said bonds were delivered to the co. judge of said county, for which payment was duly made.

C. C. DOOLITTLE.

Sworn to & subscribed by C. C. Doolittle, before me the 21st day of May, A. D. 1863.

M. P. ROSENCRANS,
Co. Judge.

79 EXHIBIT D.—R. G. O.

STATE OF IOWA,
Winnebago Co. ss:

By an order of the county court of Winnebago County, Iowa, this day

made, it is hereby ordered that a contract for building a court-house in said county was let to Martin Bumgardner for the sum of twenty thousand dollars, said court-house to be built on the public square, in the village of Forest City, in said county. Said house to be built after a plan and specifications now on file in the office of the county judge of said county, marked "A," and that the said court-house is to be completed within three years from the first day of April, A. D. 1860.

March 9, 1860.

(Signed) ROBERT CLARK,
County Judge.

Exhibit D, R. G. O.

I certify the above is a true copy of the original as entered of record in my office, Oct. 3d, A. D. 1863.

[L. S.] A. K. CURTIS,
Clerk Board Supervisors above-named County.

80 EXHIBIT E.—R. G. O.

STATE OF IOWA,
Winnebago County, ss:

By an order of the county court of said county, the bonds first issued to Martin Bumgardner are hereby cancelled and new ones issued for the same amount, and all made payable in eight years from date, with interest at the rate of ten per cent. per annum. Interest payable anually; principal and interest payable at the American Exchange Bank, in the city of New York.

March 9th, 1860.

(Signed) ROBERT CLARK,
County Judge.

I certify the above is a true copy of the original as entered of record in my office October 3d, A. D. 1861.

[L. S.] A. K. CURTIS,
Clerk Board Supervisors of said County.

81 JOHN S. BLOWERS, being sworn, says: I am thirty-five years of age, and reside in Winnebago County, Iowa; and further answers as follows:

Inter. 1. State, if you know, who acted as county judge of said county during the absence of Judge Clark in the month of March, 1860?

1st answer. B. F. Denslow.

Inter. 2. State your means of knowing that he acted as judge at that time?

2nd answer. I was present when he held one court.

Inter. 3. State about what time that court was held?

3rd. answer. It was either the first Monday in May or April, 1860.

JOHN S. BLOWERS.

82 M. P. ROSENCRANS sworn, says: I am forty years of age, and reside in Hancock County, Iowa, and to the following interrogatories answers as follows:

Inter. 1. State what search you have made for the records of the county court of Winnebago County up to the year 1861? State when you made the search, where, and all the information you have in relation to the condition of the records for that time?

1st answer. I was employed as counsel for the board of supervisors of Winnebago County, and acted as such during a part of the year 1861, and part of 1862—one year altogether. The principal part of my business was connected with this court-house transaction, and in consulting the records during that time. I drew up a petition for an injunction and filed the same in the office of the clerk of the district court of Winnebago County in order to restrain Mr. Bumgardner from building this court-house; that I copied all the records connected with the court-house transaction entire, myself, and compared them with
83 originals as entered of record; that I had, while copying those records, free access to all the records in the county judge's office. Sometime after this petition for injunction was filed I was employed to defend against these bonds. In order to do so with safety, that I might have a full understanding of the matter, I hired the clerk to copy and certify to all the records connected with the court-house transactions. He furnished me with certified copies of the record, which I know from previous examination, and copies made by myself.

Inter. 2. Examine Exhibits A, B, D, E, appended to the deposition of Robert Clark in this case, and state whether or not they are correct copies of the original entries in the records?

2nd answer. They are. They are in my own handwriting. I copied them.

Inter. 3. State whether or not you have made any search in the office of the clerk of the board of supervisors of Winnebago County or elsewhere for the original records, copies of which are set out in said exhibits, since the 1st day of January, 1861, and if yea state the result of that search?

84 3rd answer. I have, and was not able to find them.

Inter. 4. State what entries you found in the records of the county judge of said county for the time prior to the 9th day of March, 1860, including said 9th day of March, relating in any manner to the building of a court-house, or the borrowing of money, or issuing the bonds of the county for any such purpose.

4th answer. I found all the records relating to the court-house contained in the minute book; as near as my memory serves me, they were all in connection, without anything intervening the entries; as near as I can recollect, the first entry relating directly to the court-house was a petition to build a court-house, of which Exhibit F is a true copy; the next an order for an election, of which Exhibit A, appended to the deposition of Robert Clark, is a true copy; the next, a record of the result of the election, of which Exhibit B, appended to the deposition of Robert Clark, is a true copy; the next, an order of the county court declaring a contract was let, of which Exhibit D, appended to the deposition of Robert Clark, is a true copy; the next, an order
85 for issuing bonds of said county, of which Exhibit G is a true copy; the next, the entry of the original bonds, cancelled, of which Exhibit E, appended to the deposition of Robert Clark, is a true copy; and the last entry was an order to extend the time for completing said court-house, of which Exhibit H is a true copy.

Inter. 5. State if you know who acted as county judge of Winnebago County during the month of March, 1860.

5th answer. B. F. Denslow, the county clerk.

Inter. 6. State your means of information fully.

6th answer. I transacted business with him as county judge.

Inter. 7. What time in March did you transact business with him?

7th answer. Cannot tell exactly, but it was during the absence of Mr. Clark.

Cross-examined by Mr. Bissell, for plaintiff:

X-ex. Inter. 1. Are you acting as counsel for the defendant in this suit?

1st answer. I am.

Inter. 2. Did you obtain an injunction upon the petition that you filed in the district court?

86 2nd answer. I did not; I withdrew the petition to test the validity of the bonds.

M. P. ROSE'CRANS.

MARTIN BUMGARDNER sworn, says: I am forty-five years of age; reside in Mason City, Cerro Gordo County, Iowa; and further answers as follows:

Inter. 1. State all that you know relative to your receiving bonds from the county of Winnebago on the 9th day of March, 1860.

1st answer. I don't recollect whether it was on the 9th day of March; the bonds were dated the 9th. They were eighty bonds, two hundred and fifty dollars in each bond, as nearly as I can recollect. I took those bonds to New York, and could not sell them. I took Mr. Clark with me to assist me in selling them. I did not think they were good for anything before I started with them. We got there, and found we could not dispose of them. I told Mr. Clark I was ready to go home; told him if the county had made a payment that was not good,

87 the county was good to sue for the damages. He told me to hold on, not to be too fast, and if those bonds were not good he would issue good bonds. He then issued forty bonds for five hundred dollars each. After the bonds were filled out, he (Clark) brought to me a bill for eighteen dollars for printing new bonds and a seal; told me I would have to pay it, because I could not make the county pay for it. I told him that was a queer way to get my damages. I employed a man to negotiate bonds for me previous to this, when I had the first bonds, and he made a trade with a man who' I never saw myself. My agent, Mr. Ripton, came to me, and Mr. Clark with him, and said that this man would give me for thirteen thousand dollars of my bonds ten thousand dollars New York Central Railroad bonds, and those New York Central Railroad bonds were put in the market, and brought eighty cents on the dollar. I received the money and bought goods with it, by the advice of Mr. Clark. I listened to him a good deal in the transaction.

88 (Objection. Objected to by Mr. Bissel, for plaintiff, as being irrelevant and incompetent; and also as to the conversation between the witness and others, as being hearsay.)

Inter. 2. Examine Exhibit C, appended to the deposition of Robert Clark, and state what bonds, if any, were delivered to you by said Clark as county judge of Winnebago County, in that form.

2nd answer. I think that this paper represents the first eighty bonds.

Inter. 3. State how long you held those bonds.

3rd answer. As nearly as I can recollect, between two and three weeks.

Inter. 4. Who did you deliver them to finally?

4th answer. I gave them up to Robert Clark after he issued the new ones in New York City.

Inter. 5. State who went with you to New York City.

5th answer. Robert Clark.

Inter. 6. What day did you leave Winnebago County?

6th answer. I do not recollect, but think it was the first Monday after the 9th day of March, 1869.

Inter. 7. State how often you and Mr. Clark were together in New York.

89 7th answer. I cannot say how often; we roomed together and were there, as near as I can recollect, about six weeks; we were away from home about nine weeks and were together there with the exception of one week; and while going and coming were together nearly all the time, with the exception of a day occasionally, when Mr. Clark said they did not want me present.

Inter. 8. State if you know where and by whose order these bonds were printed?

8th answer. I don't know who printed them or by whose order they were printed.

Inter. 9. State who paid for printing them?

9th answer. I paid for them, because Mr. Clark said I could not get them without I did.

Inter. 10. Examine the plaintiff's petition and exhibit, and state when and where the bonds therein described were signed, sealed and delivered to you by Robert Clark, as county judge of Winnebago county.

10th answer. I cannot say where they were signed, except that they were signed in New York. They were delivered to me in the

90 Western Hotel, New York City; the seal was on them when I got them.

Inter. 11. State who paid for the making of that seal?

11th answer. I did. It was included in the eighteen dollars I paid. I afterwards sold the seal to the county for four dollars.

Cross-examined by Mr. Bissel for plaintiff:

X-ex. Inter. 1. How long have you resided in Winnebago County?

1st answer. I resided there about three years and a half?

MARTIN BUMGARDNER.

91 EXHIBIT F.—R. G. O.

STATE OF IOWA, *Winnebago County, ss:*

To the hon. county judge of Winnebago County, Iowa:

We, the undersigned, citizens of said county and legal voters, would most respectfully petition your honor to let a contract to build a court-house in said county, of such size as you in your judgment may think the wants of the county demand, and your petitioners will ever pray.

Dated at Forest City, Jan. 12, 1860.

Names.	Names.
G. W. SCOTT.	GEO. W. LACKOU.
G. S. BLOWERS.	M. BUMGARDNER.
ALLEN PLACE.	W'M LACKOU.
GEO. STRONG.	WET HILL.
A. M. GEFFERDS.	B. F. DENSLOW.
C. H. DAY.	A. P. HARPER.
A. K. CURTIS.	E. A. AMES.
N. G. CURTIS.	D. STANDOFF.
CHA'S LOTY.	CHA'S CHURCH.
JA'S JACKSON.	JA'S CHURCH.
CHA'S BICE.	H. BEEDLE.
THO'S BEARRE.	W'M GILBERT.
GEO. BEEDE.	CHA'S PORTER.
F. M. PORTER.	CHA'S L. PORTER.

I certify the above petition and undersigned names are true
92 copies of petition and names to the county judge of Winnebago County, Iowa, to let contract to build a court-house in Winnebago County, Iowa, dated at Forest City, Winnebago County, Iowa, Jan. 12, A. D. 1860, as above set forth.

Forest City, Oct. 3d, 1861.

A. K. CURTIS,
Clerk of Board of Supervisors, and District Court, Winnebago County, Iowa.

93 EXHIBIT H.—R. G. O.

STATE OF IOWA, *Winnebago County, ss :*

By an order of the county court of said county, this day made, the time for the completion of the court-house in said county, by Martin Bumgardner, is extended to the first day of April, A. D. 1869.

Oct. 6, 1860.

(Signed) ROBERT CLARK,
County Judge.

I certify the above is a true copy of the original as entered of record in my office.

October 3d, A. D. 1861.

[L. S.]

A. K. CURTIS,
Clerk Board Supervisors said County.

94 EHHIBIT O.—R. G. O.

STATE OF IOWA, *Winnebago County, ss :*

In accordance with a vote of the people of said county, and in pursuance of an order of the county court of said county, this day made, it is hereby ordered that *that* bonds on said county, to the amount of twenty thousand dollars be issued to Martin Bumgardner, in fulfillment of a contract entered into with said Bumgardner for the erection of a court-house in said county, said bonds to draw interest at the rate of ten per cent. per annum from the first day of April, A. D. 1860, said bonds to be issued as follows, to wit: two thousand dollars to be due one year from the first day of April, A. D. 1860; and five thousand dollars to be due three years from the first day of April, A. D. 1860; five thousand dollars to be due five years from the first day of April, A. D. 1860; and the balance, three thousand, to be due six years from the first day of April, A. D. 1860.

March 9th, 1860.

(Signed) ROBERT CLARK,
County Judge.

STATE OF IOWA, *Winnebago County, ss :*

County bonds were issued this day to the amount of twenty thousand dollars in accordance with the above order March 9th, A. D. 1860.

(Signed) ROBERT CLARK,
County Judge.

I certify the above is a true copy of the original as entered of record in my office.

Oct. 3d, A. D. 1861.

[L. S.]

A. K. CURTIS,
Clerk Board of Supervisors said County.

95 Circuit court of the United States for the district of Iowa.

I, R. G. Orwig, commissioner appointed by the said court, do hereby certify that, at the time and place before specified, appeared Withrow and Smith, attorneys for defendant, and F. E. Bissell, attorney for plaintiff; that Robert Clark, John S. Blowers, M. P. Rosencrans, and Martin Bumgardner, witnesses on behalf of the defendant, were first by me duly sworn to testify the truth, the whole truth, and nothing but the truth, to the best of their knowledge and belief, and the several foregoing interrogatories by the said attorneys, respectively, and answers by the said witnesses, respectively, were reduced to writing by me, in their presence, and by the said witnesses respectively subscribed; that they were carefully read over to the said witnesses, respectively, before they were signed, and are their depositions, as taken at the time and place before specified.

Witness my hand this 23d day of October, A. D. 1863.

R. G. ORWIG,
Commissioner.

(This deposition is endorsed:) Filed and read on hearing in No. 312, Lynde vs. Winnebago Co., May 11, A. D. 1869. George B. Corkhill, clerk.

96 And on this day, to wit, the 21st day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY. } No. 312.

This cause now coming on for hearing upon the plaintiff's demurrer to the fourth and fifth divisions of the defendant's *of the defendant's* answer, the court sustained the demurrer, as to the fourth division of the answer, and overruled the same, as to the fifth division. The cause then came on for hearing upon the plaintiff's motion to rule the defendant to subdivide the said fifth division of his answer, and afterwards the said motion was withdrawn.

The cause then came on for trial, and a jury being required the parties, by their counsel, agreed to wa've a jury of twelve, and to accept a jury of ten persons; and, the jurors being called, came Shepard Marsh and nine others, good and lawful men, who were sworn well and
97 truly to try the issue, and a true verdict to render; and, after the jury was empan'eled and sworn, the defendant asked leave to amend the said fifth division of his answer, which was granted. Whereupon, the plaintiff not being prepared to proceed to trial upon the pleadings as amended, the jury was discharged.

And the cause now coming up for further hearing on the plaintiff's motion to rule the defendant to divide the affirmative defences set forth in the said fifth division of his answer as amended, the court sustains said motion; and, on motion of the defendant, leave is given him to file amendments to his answer within thirty days from this date; and it is ordered that he serve a copy of the same on the def't's counsel within ten days after filing the same, and thereupon the cause is continued.

98 And on this day, to wit, the 17th day of May, in the May term,

A. D. 1867, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CHARLES R. LYNDE
vs.
THE COUNTY OF WINNEBAGO. } 312. Law.

In this cause the def't obtains leave to amend his answer, and the cause is continued.

And on this day, to wit, the 16th day of October, in the October term, A. D. 1867, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY. } No. 312.

In this cause the defendant has leave to withdraw the answer and amended answer filed herein and file new answer. It is further ordered that the cause be continued.

99 And on this day, to wit, the 13th day , A. D. 1868, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY. } No. 312. Law.

By consent of parties this cause is continued.

And on this day, to wit, the 26th day of October, A. D. 1868, in the October term, A. D. 1868, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

CHARLES R. LYNDE
vs.
WINNEBAGO COUNTY. } No. 312. Law.

This day this cause coming on for hearing, was continued at costs of plaintiff. It is therefore considered by the court that the defendant have and recover of and from the plaintiff his costs in this behalf, taxed at $, and that execution issue therefor.

100 And on this day, to wit, the 11th day of May, in the May term, A. D. 1869, of said court, comes the parties in said entitled cause, by their attorneys, and file their stipulation, which said stipulation is in words and figures following, to wit:

Stipulation.

In circuit court of the United States for district of Iowa. May term, 1869.

CHARLES R. LYNDE
vs.
COUNTY OF WINNEBAGO, STATE OF IOWA. }

It is agreed by and between the pl'ff and def't herein, that the said

cause may be tried by the court without the intervention of a jury, and that the court shall find specially upon the facts.

CHARLES R. LYNDE,
By SHIRAS & VAN DUZEE,
His Attorneys.
THO'S F. WITHROW,
For Def't.

101 And on this day, to wit, the eleventh day of May, in the May term, A. D. 1869, of said court, in the record of proceedings thereof in said entitled cause, is the following entry, to wit:

CHARLES R. LYNDE *vs.* WINNEBAGO COUNTY. } No. 312. Law.

And now, on this day, this cause coming on for hearing, the plaintiff appearing by Shiras, esq'r., and the defendant, by Mess. Withrow & Wright, a jury being waived in writing, this cause was submitted to the consideration of the court on oral argument of counsel.

102 And on this day, to wit, May 18, 1869, in the May term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

CHARLES R. LYNDE *vs.* WINNEBAGO COUNTY. } No. 312. Law.

This cause being submitted to the court without a jury, the court finds the following facts:

1st. The plaintiff owns the bonds, and received of his father by will, and the father purchased them for value without notice of any defence to them before their maturity.

2d. That the county judge of Winnebago submitted to the voters of said county, at a special election, held on the 6th day of March, 1860, the question of levying a tax of seven mills on the dollar, for the purpose of *of* building a court-house; said tax to be levied annually, not exceeding ten years, until sufficient amount was raised for said
103 purpose, and that the whole number of votes at said election, was twenty-nine, of which twenty-four were in favor of the proposition.

3d. That no proposition was ever submitted to said voters to borrow money or to issue bonds for that or for any other purpose.

4th. That the county judge made a contract with Martin Bumgardner to build a court-house for said county, and on account of said contract made and delivered to him, on the 9th day of March, 1860, bonds in the name of the county for $20,000, the amount for which the court-house was to be built.

5th. That afterwards, Robert Clarke, the county judge aforesaid, went to New York with said Bumgardner, and, claiming to act as county judge of said county, made and issued to said Bumgardner new bonds for $20,000, which new bonds differred in the amount of each and in time of payment, and the amount of coupons and other particulars,
104 and had a seal made at New York, which he called the seal of the county, and then and there signed said bonds and affixed said

seal to them, and delivered them to said Bumgardner, and that they are the same bonds on which this suit is founded.

6th. That said Clarke proposed to issue said bonds in substi'tion for those first mentioned, which were to be delivered up and cancelled, and the evidence shows that they were delivered to the said Clarke at New York.

7th. That while said Clark was in New York, making and delivering the bonds offerred in this suit, the clerk of the district court of Winnebago was acting as county judge in said county, and held a term of a county court, and issued county warrants, and did other business in discharge of his duties as acting county judge. Thereupon the court finds the law to be for the defendant; to which ruling the plaintiff then and there excepted and filed his bill of exceptions.

105 It is therefore considered and adjudged by the court that the defendant have and recover of and from the plaintiff the costs in this behalf laid out and expended, taxed at $ *an* and that execution issue therefor.

And now on this day, to wit, May 18, in the May term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

CHARLES R. LYNDE *vs.* WINNEBAGO COUNTY. } No. 312. Law.

And now comes the plaintiff, by Shiras & Van Duzee, and moves the court for a new trial herein, and the court, being fully advised, overrule said motion.

106 And on this day, to wit, the 18 day of May, in the May term, A. D. 1869, of said court, comes the plaintiff, by his attorneys and files his motion for a new trial, which said motion is in words and figures following, to wit:

Motion for a new trial.

In circuit court of U. S., district of Iowa.

U. S. OF AMERICA, *State of Iowa:*

CHARLES R. LYNDE *vs.* WINNEBAGO COUNTY, OF STATE OF IOWA. }

Now comes pl'ff, Charles R. Lynde, and moves this court to set aside the finding on the facts and to grant pl'ff a new trial in this cause, for the reasons following:

1st. The court erred in admitting the testimony of Robert Clark, and in overruling pl'ff's objections thereto.

2d. The court erred in admitting the testimony of Jno. S. Blowers, and in overruling pl'ff's objections thereto.

107 3d. The court erred in admitting the testimony of M. P. Rosencrans, and in overruling pl'ff's objections thereto.

4. The court erred in admitting the testimony of Martin Bumgardner, and in overruling pl'ff's objections thereto.

5th. The court erred in admitting in evidence Exhibits A, B, C, D, E, F, G, & H, attached to the depositions of def't's witnesses, and in overrulling pl'ff's objections thereto.

6th. The court erred in admitting testimony tending to show that the bonds in question were not issued in accordance with the vote of the people of the county of Winnebago.

7th. The court erred in admitting testimony tending to show that the bonds in question were not issued on the 9th day of March, 1860.

8th. The court erred in admitting testimony tending to show that the bonds in question were signed and sealed in the city of New
108 York, on a day subsequent to the date thereof.

9th. The court erred in admitting any testimony tending to show any irregularities in the manner of the issuing or execution of the bonds in question.

10th. The court erred in finding on facts as set forth in the 3, 6, & 7 sub-divisions of the written finding of facts.

11. The court erred in finding that no proposition was ever submitted to the voters of Winnebago County to borrow money or to issue bonds, or for any other purpose.

12. The ccurt erred in finding that there is no evidence to show that the original bonds issued were not delivered up and cancelled.

13. The court erred in finding that while Clarke was in New York the clerk of the district court of Winnebago Co. was acting as county
109 judge in said co., or that he held a term of court therein & used the proper seal of the county in discharge of his duties.

14th. The court erred in refusing judgement in the case to pl'ff, and in rendering judgement for def't.

SHIRAS & VAN DUZEE,
Atty's for Pl'ffs.

(Endorsed:) Filed May 11, 1869. George B. Corkhill, clerk.

110 And on this day, to wit, the 18 day of May, in the May term A. D. 1869, of said court, comes the plaintiff, by his att'ys, and files bill of exceptions, which said bill of exceptions is in words and figures following, to wit:

Bill of exceptions.

In circuit court of U. S. for district of Iowa.

U. S. OF AMERICA,
State of Iowa:

CHARLES R. LYNDE
vs.
COUNTY OF WINNEBAGO, STATE OF IOWA.

Be it remembered that, on this day this cause coming up for hearing, and the parties appearing by their counsel, and it being stipulated in writing that the cause might be submitted to the court without the intervention of a jury, the court to find specially on the facts. Thereupon, to maintain the issues on his behalf, pl't'ff offered in evidence twenty-six several coupon bonds being the bonds declared upon in
111 pl'tff's petition, each dated March 9th, 1860, for the sum of $500 each, and each of the form following, differing only in number.

(Here insert a copy bond.)

Pl'ff then introduced evidence tending to show that pl'ff was a bona fide holder for value of said bonds.

Be it further remembered that thereupon, def't, to maintain the issues on its behalf, offered testimony tending to show that no proposition was ever submitted to the people of Winnebago County, Iowa, for the borrowing of money to aid in the erection of a court-house, or for the erection of a court-house therein. That the only proposition submitted to a vote of the people of that county was, whether a tax should be levied from year to year, not exceeding ten years at farthest, the proceeds to be used in paying for a court-house. That Robert Clark, the county judge of Winnebago County, Iowa, entered into a contract with M. Bumgardner for the erection of a court-house for the sum of $20,000, and that the county judge issued bonds to that amount and delivered
112 them to the contractor as payment in advance therefor, and with him went to the city of New York for the purpose of negotiating and selling same. That, while in New York, and about the 23d of March, 1860, the said Robert Clark, finding that the original bonds could not be negotiated, had forty other bonds, each for sum of $500 00, printed, signed the same, purchased a seal and attached the same to the bonds, & delivered the same to Martin Bumgardner, and the same were sold to pl'tff's father for $10,000 stock of the New York Central R. R.; that the old bonds were delivered up to Robert Clark and cancelled; that the seal obtained in New York was brought back to Winnebago County and was by Bumgardner sold to the county for $4 00 and has ever since been used as the seal of said county; that during Clark's absence in New York, the clerk of the district court acted as county judge, and held the April term of the county court, and that one warrant was issued by such clerk, acting as county judge, during Clark's absence in New York, and that he transacted other business.

113 Be it further remembered, that the pl'ff, at the time said testimony was offerred, objected to the same being received, and objected to each and every part of the same for the reasons:

1st. That the evidence offered is irrelevent and immaterial to the issues, and does not tend to show any facts constituting a defense to plaintiff's action.

2nd. That the evidence offered tended to contradict the recitals of the bonds, and that def't was estopped from contradicting in any manner the recitals in the bonds.

3d. That the testimony offered only tended to show irregularities in the manner of the execution of the bonds, and did not touch the question of the power to issue the same, and irregularities in the execution thereof could not be shown to defeat pl't'ff's action.

The court overruled these objections, and each of them, and admitted said testimony to which ruling, pl'ff at the time duly excepted.

114 And, thereupon, both parties rested their case; and, after hearing the arguments of counsel, the court found the facts specially in writing, as follows:

Be it further remembered that thereupon the court upon said finding of facts finds the issues as a matter of law to be with def't; to which finding and ruling pl'ff at the time & place excepted, and filed a motion for new trial, as follows:

(Here insert.)

And thereupon said motion, having been submitted to the court, was overruled; to which ruling and order pl'ff at the time excepted. And *and* thereupon the court rendered judgement in favor of def't for costs; to

which ruling and judgement the pl'ff at the time excepted. And to the end that the matters and things herein set forth may fully appear of record, the pl'ff brings this bill of exceptions, which he prays may be signed and sealed, and entered of record in the case, which is done.

SAM. F. MILLER. [SEAL.]

(Endorsed :) Filed May 18, 1869. Geo. B. Corkhill, cl'k.

115 And on this day, to wit, the 25th day of May, A. D. 1870, comes the plaintiff, by his attorneys, and files his appeal bond in said entitled cause, which said bond is in words and figures following, to wit:

CHARLES R. LYNDE
vs.
COUNTY OF WINNEBAGO.

Know all men by these presents that we, the undersigned, are held and firmly bound unto The County of Winnebago, Iowa, in the sum of five hundred dollars; for the payment of which sum, well and truly to be made, we bind ourselves firmly by these presents.

The condition of this obligation is such that whereas the above-named Charles R. Lynde hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered by the circuit court of the United States in & for the district of Iowa, in said cause:

116 Now, therefore, if the said Charles R. Lynde shall prosecute said writ of error to effect, and answer all damages & costs if he shall fail to make good his plea then this obligation shall be void; otherwise to remain in full force and effect.

Signed this 17th day of May, 1870.

CHARLES R. LYNDE,
By SHIRAS, VAN DUZEE & HENDERSON,
His Attorneys.

C. H. EIGHMEY.
O. P. SHIRAS.

Endorsed: Filed May 25, 1870. George B. Corkhill, clerk.

117 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in said circuit court before you, between Charles R. Lynde, and The County of Winnebago, State of Iowa, a manifest error hath happened, to the great damage of the said Charles R. Lynde, as by his complaint appears; and we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the Supreme

Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 16th day of May, in the year of our Lord one thousand eight hundred & seventy, and of the independence of the United States the 95th y.

[SEAL.] GEORGE B. CORKHILL,
Clerk.

(Indorsed:) Cha's R. Lynde v. County of Winnebago. Writ of error.

118 UNITED STATES OF AMERICA, *ss:*

To the County of Winnebago, State of Iowa, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden on the first Monday in December next, pursuant to a writ error, filed in the clerk's office of the circuit court of the United States for the district of Iowa, wherein Charles R. Lynde is plaintiff, and the county of Winnebago, State of Iowa, are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Jno. F. Dillon, judge of the 8th judicial circuit embracing the district of Iowa, this 16 day of May, in the year of our Lord, 1870.

JNO. F. DILLON,
Circuit Judge.

We acknowledge service of the above citation, Aug. 1st, 1870.

WITHROW & WRIGHT,
For Winnebago Co.

(Indorsed:) Charles R. Lynde v. County of Winnebago.

119 DISTRICT OF IOWA:

I, George B. Corkhill, clerk of the circuit court of the United States for said district of Iowa, do hereby certify the foregoing tran'cript, from pages one to one hundred & nineteen, inclusive, to contain a full, true, and perfect copy from the record of all the proceedings of said court in said cause wherein Charles R. Lynde was plaintiff and Winnebago County defendant, as the original of the same now remains in my custody, and I further certify that the writ of error sued out by Charles R. Lynde, plaintiff in error, in said cause is annexed to said transcript.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Des Moines, in said district, this twenty-ninth day of November, A. D. 1870.

[SEAL.] GEORGE B. CORKHILL,
Clerk.

(Indorsement on cover:) No. 382. Charles R. Lynde, plaintiff in error, vs. The County of Winnebago, State of Iowa. Iowa C. C. U. S. Filed 10th December, 1870.